IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 51 of 2007
In
SPECIAL CIVIL APPLICATION No. 20880 of 2005
WITH
CIVIL APPLICATION NO.1197 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RATHOD ARUNBHAI BALDEVBHAI - Appellant(s)
Versus
UTTAR GUJARAT VIJ COMPANY LTD - Respondent(s)

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Appearance :

MR RV DESAI for Appellant
MR DIPAK R DAVE for Respondent

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 23/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

1. The judgement delivered in Special Civil Application No.20880 of 2005, dated 15th November, 2006, has been challenged in this Letters Patent Appeal.

2. The facts, which can be seen upon perusal of the impugned judgement, are as under:

2.1 The appellant, who claimed to be a `workman', was in fact appointed as an apprentice in the Trade of Clerk under the provisions of the Apprentices Act, 1996 (hereinafter referred to as “the Act”). Suppressing the said fact, after working for about one year with the respondent employer, he approached the Labour Court after approximately ten years, raising a dispute that his services had been wrongly terminated by the respondent employer.

2.2 What is pertinent to note here is that the appellant, in his examination in-chief, stated before the Labour Court that he had been working as a Clerk and his services had

been wrongly terminated. He did not state the fact that he was appointed as an apprentice in the Trade of Clerk, but he admitted in his cross-examination that he had been appointed as an apprentice under the provisions of the Act. Unfortunately, the respondent employer did not lead any evidence and did not place on record the order under which the appellant had been appointed to work as an apprentice in the Trade of Clerk, though the said fact was stated in the written statement filed before the Labour Court.

2.3 For the afore-stated reason, the Labour Court came to the conclusion that the appellant was a workman and ultimately, directed reinstatement of the appellant as a Clerk by an award dated 5th May, 2005.

3. The award of the Labour Court had been challenged by the respondent employer by filing Special Civil Application No.20880 of 2005 before this Court. Upon perusal of the record, the learned Single Judge found contradictions made by the appellant in his examination in-chief and in the cross-examination. The only way out for the learned Single Judge was to look at the order

whereby the appellant was given appointment so as to see that justice is done in the case.

4. In the afore-stated circumstances, the respondent employer was permitted to place on record a copy of the order whereby the appellant had been appointed to work in the Trade of Clerk as an apprentice under the provisions of the Act.

5. It is very important to note at this juncture that the appellant is personally present today in the Court. The appellant admitted his signature, which was shown to him by the learned advocate appearing for the respondent employer to the effect that, in pursuance of the order dated 22nd March, 1982 whereby he was appointed to work as an apprentice in the Trade of Clerk, he had resumed his duties. Thus, it is now an admitted fact that the appellant had been appointed to work as an apprentice in the Trade of Clerk under the provisions of the Act.

6. Learned advocate Shri R.V.Desai appearing for the appellant has mainly submitted that the learned Single Judge should not have looked at the appointment order dated 22nd March,

1982, whereby the appellant was appointed to work as an apprentice in the Trade of Clerk under the provisions of the Act. He has relied upon two judgments of the Hon'ble Supreme Court, namely, the decisions in the case of ***Executive Engineer v. Suresh Chandra Sharma, 2006 SCC (L&S) 878*** and ***Surya Dev Rai v. Ram Chander Rai & ors., 2004(1) GLR 320***, to substantiate his submission that the learned Single Judge should not have interfered with the findings arrived at by the Labour Court.

7. On the other hand, learned advocate Shri Dipak Dave appearing for the respondent has submitted that the appellant had been appointed in the Trade of Clerk as an apprentice under the provisions of the Act and, therefore, he was not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. The appellant had been appointed to work as an apprentice clerk for one year and, therefore, by efflux of time, his apprenticeship had come to an end and hence, he had been rightly relieved. He placed reliance on the decisions of the Hon'ble Supreme Court in the cases of ***U.P. State Electricity Board v. Dharmendra Kumar Bajpai, 2005(0) GLHEL-SC 38140*** and ***National Small Industries Corporation Ltd. v. V.***

Lakshmi-narayanan, 2006 AIR SCW 5927, so as to substantiate his case that the appellant was an apprentice and, therefore, he was not entitled to any protection under the provisions of the Industrial Disputes Act, 1947.

8. We have heard the learned advocates at length and have also considered the judgments referred to hereinabove. We have also gone through the judgement referred to by the learned Single Judge delivered in the case of ***Mukesh K. Tripathi v. Senior Divisional Manager, LIC & ors., (2004) 8 SCC 387***, which lays down law to the effect that an apprentice would not get right as a workman under the provisions of the Industrial Disputes Act, 1947.

9. In our opinion, the learned Single Judge was absolutely justified in looking at the appointment order of the appellant, especially when the appellant had tried to misguide the Labour Court by suppressing the fact that he had been appointed under the provisions of the Act. It was the duty of the appellant to place the correct facts before the Labour Court, but fortunately for the respondent, it was admitted by the

appellant in his cross-examination that he had been appointed as an apprentice. Inspite of the above fact, the Labour Court came to the conclusion that the appellant was a workman and his services had been wrongly terminated. The appellant had been, therefore, ordered to be reinstated in service. In our opinion, the Labour Court was not justified in making the award to the above effect. The learned Single Judge was absolutely justified in setting aside the award of the Labour Court so as to do justice to the respondent employer, who had appointed the appellant under the provisions of the Act so as to see that the appellant gets some experience as per the laudable object of the Act for which the Act has been enacted.

10. We do not find any substance in the Appeal. The Appeal is, therefore, dismissed. In view of dismissal of the Appeal, no orders on the Civil Application.

[ANIL R. DAVE, J.]

[HARSHA DEVANI, J.]

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